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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,070	04/24/2001	Sergey N. Razumov	59036-017	2177
7590	06/07/2005		EXAMINER	
McDERMOTT, WILL & EMERY 600 13th Street, N.W. Washington, DC 20005-3096			FADOK, MARK A	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 06/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/840,070	RAZUMOV, SERGEY N.	
	Examiner	Art Unit	
	Mark Fadok	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 March 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12, and 14-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-12 and 14-26 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 April 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Response to Amendment

The examiner is in receipt of applicant's response to office action mailed 1/6/2005 which was received 3/15/2005. Acknowledgement is made to the amendment to claims 1,3-6,8-10,12,14,20,22 and 24, the cancellation of claim 13 and the addition of new claims 25 and 26. Applicant's remarks and amendments have been carefully considered, but were not found to be persuasive, therefore, the previous rejection is restated below modified as necessitated by amendment.

Drawings

The drawings filed on 4/24/2001 are acceptable subject to correction of the informalities indicated on the attached "Notice of Draftsperson's Patent Drawing Review," PTO-948. In order to avoid abandonment of this application, correction is required in reply to the Office action. The correction will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 3 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in

the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The examiner could not locate support for the new limitation of “...assigning the pick up station before the customer arrives at the purchase obtaining facility.”

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 and 14-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada (6,336,100) in view of Domain (5,158,155) and further in view of Official Notice.

In regards to claim 1, Yamada discloses an advance ordering system for enabling a customer to order a purchase in advance (abstract),

at least one storage facility for storing goods available for ordering (FIG 1 items 4 and 5), and

multiple purchase obtaining facilities remote with respect to the storage facility, for enabling the customer to obtain the ordered purchase delivered from the storage facility after receiving an order for the purchase from the customer (FIG 1, item 9),

Yamada teaches on-line shopping then picking up at a remote location (convenience store) product shipped from a storage facility (manufacturer) for pick up by the customer (FIG 1) along with identifying data for picking up the order (FIG 12), but does not specifically mention all the particulars of the instant invention in regards to the pick up facility. Domain teaches a pick up facility that has a plurality of pick up stations that direct customers to the proper pick up station for easy pick up and processing of a customer order. It would have been obvious to a person having ordinary skill in the art to include in Yamada using the pick up facility of Domain, because Vendors operating convenience markets often find themselves disadvantaged when competing with the larger grocery and department stores for customers who are willing to sacrifice convenience for a larger product or service selection. Providing a shopping facility that presents a large variety of goods and services to consumers, and enables consumers to receive their desired goods and services in a fast and convenient manner would attract both types of consumers (Domain col 1, lines 50-60).

the drive-through purchase obtaining facility including:

multiple pick-up stations, each of the pick-up stations being arranged for enabling the customer in the vehicle to pick up the ordered purchase delivered to the vehicle. In

regards to the assignment of the pickup lane when the customer arrives at the facility being done automatically. Domain teaches directing the customers in their vehicles to one of several pickup stations (col 9, lines 30-35). It would have been obvious to one having ordinary skill in the art at the time of the invention was made to automatically direct a person to the proper checkout station, since it has been held that broadly providing automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192. Domain would be motivated to use this automation because this would save money by not having a person to direct the customer to the proper isle, thus saving money and expense on the individual's payroll.

In regards to the pick-up station being assigned as a result of information provided by the customer. It is inherent in the teachings that some information needs to be provided in order for the facility to ascertain what order is being picked up (see also Domain, col 7 and 8, when purchasing Liquor identification is required before a pick-up station is assigned).

In regards to claim 2, the combination of Yamada and Domain teaches the control station is configured for assigning the pick up station for obtaining the purchase ordered before the customer arrives at the purchase obtaining facility (col 11, lines 10-30, express lane).

In regards to claim 3, the combination of Yamada and Domain teaches wherein the drive-through purchase obtaining facility comprises multiple pick-up stations, each of the pick-up stations being arranged for enabling the customer in the vehicle to pick up the ordered purchase delivered to the vehicle (Domain FIG 1).

In regards to claim 4, the combination of Yamada and Domain teaches wherein the ID data identifies the customer.

In regards to claim 5, the combination of Yamada and Domain teaches wherein the ID data provides information on the placed order (col 3, lines65 – col 4, line 15).

In regards to claim 6, the combination of Yamada and Domain teaches wherein the drive-through purchase obtaining facility further comprises a service facility for handling purchases delivered from the storage facility (see response to claim 1).

In regards to claim 7, the combination of Yamada and Domain teaches wherein the control station is responsive to the ID data of the customer for providing the service facility with a request to deliver the ordered purchase to the pick-up station assigned to the customer (see response to claim 1).

In regards to claim 8, the combination of Yamada and Domain teaches wherein the control station enables the customer to enter the drive-through purchase obtaining facility only after the customer is identified (Domain col 16, lines 45-67).

In regards to claim 9, the combination of Yamada and Domain teaches wherein the drive-through purchase obtaining facility further comprises at least one check-out station for enabling the customer to check out the ordered purchase without leaving the vehicle (Domain col 17, lines 20-35).

In regards to claim 10, the combination of Yamada and Domain teaches wherein the pick-up station is released from being assigned to the customer after the ordered purchase is obtained (Domain col 17, lines 20-35).

In regards to claim 11, the combination of Yamada and Domain teaches wherein the check-out station enables the customer to exit the drive-through purchase obtaining facility only after the ordered purchase is checked out (col 17, lines 20-35).

In regards to claim 12, the combination of Yamada and Domain teaches wherein the pick-up station includes a checkout arrangement for enabling the customer to automatically check out the ordered purchase (col 8, lines 1-13).

In regards to claim 14, Yamada discloses a method of selling goods, comprising the steps of: storing the goods available for sale in a storage facility (FIG 1Items 4 and 5), enabling a customer to order a purchase (FIG 2), Yamada teaches delivering a product from a remote storage facility to a pickup station that is convenient to the on-line shopper (FIG 1), but does not specifically mention that the pickup station has multiple pick-up stations, each arranged for enabling the customer in a vehicle to pick up the ordered purchase delivered to the vehicle, and automatically assigning to the customer one of said multiple pick-up stations when the customer arrives at the drive-through purchase obtaining facility. Domain teaches multiple pick-up stations, each arranged for enabling the customer in a vehicle to pick up the ordered purchase delivered to the vehicle, and assigning to the customer one of said multiple pick-up stations when the customer arrives at the drive-through purchase obtaining facility (see summary). It would have been obvious to a person having ordinary skill in the art to include the Yamada the pickup station as taught by Domain, because this would offer a convenient method for a customer to pick up the product without having leave their cars which has been notoriously well known as a desirable method for pick up of products (e.g. Walgreen and McDonalds drive through). In regards to the assignment of the pickup lane when the customer arrives at the facility being done automatically. Domain teaches directing the customers in their vehicles to one of several pickup stations (col 9, lines 30-35). It would have been obvious to one having ordinary skill in the art at the time of the invention was made to automatically

direct a person to the proper checkout station, since it has been held that broadly providing automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192. Domain would be motivated to use this automation because this would save money by not having a person to direct the customer to the proper isle, thus saving money and expense on the individual's payroll.

In regards to the pick-up station being assigned as a result of information provided by the customer. It is inherent in the teachings that some information needs to be provided in order for the facility to ascertain what order is being picked up.

In regards to claim 15, the combination of Yamada and Domain teaches wherein said one of the multiple pick-up stations is assigned to the customer in response to ID data identifying the customer (see response to claim 14 "automatic" and col 5, lines 10-40, col 8, lines 5-10 "order")

In regards to claim 16, the combination of Yamada and Domain teaches wherein a request to deliver the ordered purchase to the assigned one of the multiple pick-up stations is generated simultaneously with assigning said one of the multiple pick-up stations (Domain col 8, lines 15-55).

In regards to claim 17, the combination of Yamada and Domain teaches wherein said one of the multiple pick-up stations is assigned to the customer in response to ID data identifying the ordered purchase (domain col 7, line 30- col 8, line 13).

In regards to claim 18, the combination of Yamada and Domain teaches wherein a request to deliver the ordered purchase to the assigned one of the multiple pick-up stations is generated simultaneously with assigning said one of the multiple pick-up stations (Domain col 8, lines 15-55).

In regards to claim 19, the combination of Yamada and Domain teaches the step of enabling the customer to check out the ordered purchase without leaving the vehicle (Domain col 8, lines 10-13).

In regards to claim 20, the combination of Yamada and Domain teaches the step of releasing the pick-up station from being assigned to the customer after the ordered purchase is obtained (Domain col 7, lines 35-40).

In regards to claim 21, the combination of Yamada and Domain teaches the step of enabling the customer to automatically check out the ordered purchase at said one of the multiple pick-up stations (Domain col 8, lines 10-13).

Claims 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domain (5,158,155) and further in view of Official Notice.

In regards to claim 22, Domain teaches enabling a customer to order items that have the assigned to multiple pickup stations (abstract). In regards to the assignment of the pickup lane being done automatically. Domain teaches directing the customers in their vehicles to one of several pickup stations (col 9, lines 30-35). It would have been obvious to one having ordinary skill in the art at the time of the invention was made to automatically direct a person to the proper checkout station, since it has been held that broadly providing automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

Domain teaches the assignment being based on customer ID (col 7 and 8, when purchasing Liquor identification is required before a pick-up station is assigned). Furthermore, it is inherent in the teachings that some information needs to be provided in order for the facility to ascertain what order is being picked up.

In regards to claim 23, Domain teaches wherein the pick-up stations enable the customer to obtain the purchase ordered in advance from a remote location (Abstract).

In regards to claim 24, the combination of Yamada and Domain teaches wherein said assignment arrangement is configured to automatically assign said one of

the multiple pick-up stations to the customer in response to ID data identifying the ordered purchase (see response to claim 22).

In regards to claim 25, the combination of Yamada and Domain wherein said assignment arraignment is configured to automatically assign said one of the multiple pick-up stations to the customer in response to ID data identifying the customer (see response to claim 22).

In regards to claim 26, the combination of Yamada and Domain wherein said assignment arraignment is configured to release said one of the multiple pick-up stations from being assigned to the customer when the customer obtains the purchase (Domain, col 17, lines 30-35).

Response to Arguments

Applicant's arguments filed 3/15/2005 have been fully considered but they are not persuasive.

In regards to claims 1-12:

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case the examiner combines the off site purchasing of Yamada with the

assignment and pick up teachings of Domain. There is no reason to believe that one of ordinary skill in the art at the time of the invention could not combine these two teachings less the ordering at the terminal as is taught by Domain.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., teaching sited from specification, page two of response paragraph 2) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., reassigning a station that is occupied, this feature is also not found in the specification.) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner has used a teaching from Domain to show the motivation to combine.

Applicant argues that Domain does not provide the same result as the instant application because there is no means for increasing through put. The examiner disagrees and directs the applicant's attention to col 17, lines 10-35 which clearly teach a means for directing customers to available pick up points to speed up delivery.

Applicant argues that Domain constitutes evidence of nonobviousness because it teaches that pre-placed orders are picked up through a series of express pickup stations. The examiner notes that the express lane is only a preferred embodiment (col 11, lines 10-15) and is therefore not required by the system of Domain. Therefore, Domain does not teach away from the use of the other pick up point if this preferred embodiment is not present.

In regards to claims 14-21, applicant argues that neither Yamata nor Domain teach or suggest assigning to a customer one of said multiple pick up stations in response to information provided when the customer arrives at the drive-through purchase facility. The examiner disagrees and directs the applicant's attention to col 16, lines 65-70, where the customer is provided with a pick-up designating number identifying the open pickup station. In regards to applicant's newly added feature "to information provided by the customer" It is inherent in the teachings that some

information needs to be provided in order for the facility to ascertain what order is being picked up.

The applicant argues that the manual activity of Domain does not accomplish the claimed automatic arrangement. The examiner disagrees and directs the applicant's attention to the rebuttals provided by the examiner above.

In regards to claims 22-24, applicant argues that the assigning of a pick up station is not provided in response to information provided by the customer. It is inherent in the teachings that some information needs to be provided in order for the facility to ascertain what order is being picked up. Furthermore, col 7 and 8 of Domain clearly shows in the case of liquor purchases, identification being required before a pick-up station is assigned.

Applicant argues that Domain does not provide the same result as the instant application because there is no means for increasing through put. The examiner disagrees and directs the applicants attention to col 17, lines 10-35 which clearly teach a means for directing customers to available pick up points to speed up delivery.

Official Notice Traversal

A "traverse" is a denial of an opposing party's allegations of fact. The Examiner respectfully submits that applicants' arguments and comments do not appear to traverse what Examiner regards as knowledge that would have been

generally available to one of ordinary skill in the art at the time the invention was made. Even if one were to interpret applicants' arguments and comments as constituting a traverse, applicants' arguments and comments do not appear to constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 707.07(a). An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. In re Boon, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

If applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **(571) 272-6755**. The examiner can normally be reached Monday thru Thursday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **(571) 272-7159**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **receptionist** whose telephone number is **(571) 272-3600**.

Any response to this action should be mailed to:

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"PROPOSED" or "DRAFT"]



Mark Fadok

Primary Examiner